IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

CRL.A.No. 1032 of 1998(C)

ST.178/1996 of ASSISTANT SESSIONS COURT, PALAKKAD.

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APPELLANT: COMPLAINANT

N.SURESH BABU,
S/O.NATARAJA THARAKAN,
BHAGAVATHY STREET,
PALLI THERUVU, PALAKKAD.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENTS: ACCUSED & STATE

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1. **C.ARUMUGHAN, S/O.A.CHELLAN,**
   SUBRAMANIAPURAM,
   PATTIKKARA, PALAKKAD.

2. **STATE OF KERALA, REP.BY**
   PUBLIC PROSECUTOR, HIGH
   COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.RAJESH SIVARAMANKUTTY
PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.1032 OF 1998

Dated 24th January, 2007

JUDGMENT

This appeal is filed against the acquittal of the accused who was convicted for an offence under Section 138 of the Negotiable Instruments Act. According to the complainant, the accused who wanted to meet the expenses of the marriage of his sister, sought financial aid to the tune of Rs.65,000/= and subsequently Rs.21,000/= more and accepted the amounts from the complainant. The accused offered old furniture to the complainant and the complainant accepted the same and debited Rs.7,000/= as value of the above said furniture from the amount due to the complainant. On 29.2.1996 the amount due from the accused was calculated and found that the interest would come to Rs.13,035/= and thus for the total liability fixed at Rs.92,035/= the accused had issued cheque drawn on Uco Bank, Palakkad branch on the same day. An agreement was also executed in a stamp paper on the same day itself asserting that the cheque would not be dishonoured at any cost and two witnesses also had affixed their signatures in the above said document. But, when the

cheque was presented for encashment through the Punjab National Bank, the same was dishonoured stating that the account on which the cheque was drawn was closed. Thereafter, after fulfilling the formalities the complaint was filed. Ext.P1 is the cheque. Ext.P1 is dated 29.2.1996. It is seen from the evidence that the account was closed on 15.12.1995, much before the issuance of the cheque. The case of the appellant is that Ext.P7 agreement was executed on the very same day when the cheque was issued. Ext.P7 is the stamp paper issued on 11.1.1995. The agreement was seen executed on 29.3.1995. Date of the cheque was 29.2.1996. Therefore, on the basis of the evidence the court found that the contention of the complainant that cheque was issued on the same date when the agreement was executed cannot be correct. It is the contention of the accused that he was employed by the complainant for conducting chitty business and in assurance of flawless service, accused gave two blank signed cheque leaves and two stamp papers. It was also found that the cheque as well as the agreement were forged in an unscrupulous manner. In any event, since the appellant's complaint itself shows that the cheque was given on the same date when the agreement was executed and agreement and

cheques are of different dates, the complainant failed to prove his case. Apart from the above, there is no evidence to show that cheque was issued for a legally enforceable liability. I fully agree with the view of the court below and in any event, finding of the trial court is a possible view and no grounds are made out in the appeal proceedings for interfering with the order of acquittal.

The appeal is dismissed.

J.B.KOSHY
Judge

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